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Broadband Industry Practices (WC Docket No. 07-52)

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker

In 2005, we asked the Public Utility Commission of Texas (PUCT) to determine state law preserves customer choice in accessing and using the Internet over high-speed connections, or if no such (or inadequate) language exists, what changes might be appropriate. We were concerned that the potential existed for broadband network owners to limit customer choice, preventing consumers from accessing the web sites and applications they wanted. As the regulatory body with oversight of the telecommunications industry, the PUCT was an appropriate agency to seek evidence that customer choice was limited.

We received the PUCT's report before the start of the 2007 legislative session, and its conclusion might startle federal regulators:

"No evidence exists that any broadband provider has yet affected customer choice of Internet-enabled applications employed in association with broadband service in Texas."

It recommended no changes in state law, finding "no compelling reasons" to add any additional requirements or restrictions.

At the time, the latest FCC data (as of 12/31/05) said there were 132 high-speed Internet providers in Texas (Table 8) serving 3,466,494 customers (Table 9). According to the data, 74% of end-user premises had access to DSL where phone service was offered, and 88% had access to cable broadband where cable service was offered (Table 14). Eighty-eight percent of zip codes had at least three high-speed Internet providers, and 47% had at least seven (Table 17).



Flash forward to today. The latest FCC data (as of 6/30/08) said there were 137 high-speed Internet providers in Texas (Table 8) serving 9,110,055 customers (Table 9). Eighty percent of end-user premises had access to DSL where phone service was offered, and 96% had access to cable broadband where cable service was offered (Table 14). Ninety-nine percent of Texas zip codes had at least three high-speed Internet providers, and 73% had at least seven (Table 17).

What does the FCC see today that our PUCT did not see four years ago, when there was considerably less competition and fewer broadband users?

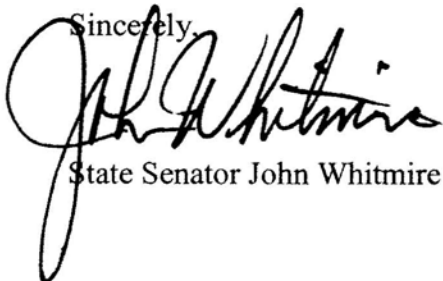
It strikes me as rather obvious that consumers have considerable power to change providers should their broadband Internet access be restricted by one of many players in the market. Likewise, it seems just as obvious that intentionally blocking or degrading consumers' experiences would immediately lead to terribly negative press, vitriolic blog entries and angry tweets (There are a lot more blogs and social networking opportunities to complain about service than in 2005.), and a conviction in the court of public opinion, such that even those customers who were not affected feel compelled to switch to another provider.

So why on earth does this market need onerous regulation now? Who exactly are we protecting? It's clearly not the customer. Perhaps it's the companies whose business models require a continued free ride even as they, and their customers, rapidly expand the bandwidth they consume. That would make the proposed regulation tantamount to picking winners and losers, which, interestingly, is what net neutrality supporters claim the broadband companies will do if the regulations are not adopted.

In Texas, we have found that competition is the best regulator. It worked with telephone service (Texas opened the local telephone market to competition a year before Congress.). It is working for cable television (Texas reformed its franchising law in 2005.). It works in the wireless arena. It clearly works in the Internet arena, as the Internet market is far more robust and competitive than in 2005, when there was no evidence of consumers being harmed.

Net neutrality is born out of relic thinking, as if the world were still powered by great monopolies whose only interest is to oppress their customers. The FCC's own data and our state's experience compellingly suggest otherwise.

Sincerely,

A handwritten signature in black ink, appearing to read "John Whitmire". The signature is stylized with a large, looping initial "J" and a long, sweeping underline that extends to the right.

State Senator John Whitmire